

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KENNETH ALVAREZ,

Plaintiff,

v.

GOVERNOR JAY INSLEE, in his
official capacity as Governor of the State
of Washington; KEVIN W. QUIGLEY, in
his official capacity as Director of the
Washington Department of Social and
Health Services, SERVICE EMPLOYEES
INTERNATIONAL UNION
HEALTHCARE 775NW, a labor
organization; and SEIU HEALTHCARE
NW TRAINING PARTNERSHIP

Defendants.

CASE NO. 16-5111 RJB

ORDER ON PLAINTIFF'S MOTION
FOR LEAVE TO FILE AMENDED
COMPLAINT

This matter comes before the Court on Plaintiff's Motion for Leave to File Amended Complaint. Dkt. 35. The Court has considered the pleadings filed in support of and in opposition to the motion and the file herein.

Plaintiff filed this case asserting that his First Amendment rights against compelled speech are being violated when the State of Washington requires him, as an “individual provider . . . of personal or respite care services” (“IP”), to: (1) meet with Defendant Service Employees International Healthcare 775NW (“SEIU”) and listen to “its private, pro union speech as part of IP’s mandatory training,” (2) receive SEIU’s “private pro-union speech” by devoting certain bulletin boards to SEIU’s leaflets, and (3) receive SEIU’s “private pro-union speech” by devoting certain spaces on IP’s mandatory payroll system to SEIU’s messages. Dkt. 1. Plaintiff also makes claims under the Washington State Constitution Art. 8 § 5, which Plaintiff contends “prohibits the state from giving or loaning its credit to any association,” and RCW 42.52.160, which Plaintiff maintains “prohibits state officers and employees from using any persons, money or property under the officers’ official control, for the benefit or gain of another beyond a de minimis use.” *Id.* Plaintiff seeks declaratory and injunctive relief as well as attorneys’ fees and costs. *Id.*

Plaintiff now moves for leave to file an amended complaint. Dkt. 35. For the reasons stated below, the motion should be granted.

I. FACTS

The facts are in the Court’s May 9, 2016 Order on Defendant SEIU Healthcare NW Training Partnership’s Motion to Dismiss, and for ease of reference are repeated here:

According to the Complaint, Plaintiff is an IP who is paid by Washington’s Department of Social and Health Services (“DSHS”) to provide care for his disabled fiancé. Dkt. 1, at 5. He asserts that “IPs are public employees ‘solely for the purposes of collective bargaining’ and have been organized into a single statewide bargaining unit.” *Id.* (citing RCW 74.39A.270). SEIU is the “exclusive representative of the IP bargaining unit,” and so engages in collective bargaining with the state (as represented by the governor or governor’s designee). *Id.*, at 6. The state and SEIU are obligated to bargain in good faith. *Id.* As is relevant to this motion, NW Training Partnership is asserted to be a nonprofit 501(c)(3) formed by SEIU “and participating employers, including the State of Washington,

1 with its place of business located at 635 Andover Park W, Seattle, WA 98188.”
 2 *Id.*, at 6. The Complaint asserts that NW Training Partnership provides all IP
 training, which is a condition of the IP’s employment. *Id.* at 7.

3 According to the Complaint, the 2015-2017 Collective Bargaining Agreement
 (“CBA”) between the state and SEIU obligates the state to require that IPs receive
 4 SEIU’s “pro-union speech during portions of mandatory events that Plaintiff and
 all other similarly situated IPs must complete as a condition of employment.” *Id.*
 at 6. As instances where the state has compelled him to receive SEIU’s “pro-
 5 union” speech (which he maintains is unrelated to client-care training) through the
 CBA, Plaintiff points to forced meetings with SEIU during paid mandatory basic
 6 training, contracting appointments, and continuing education classes. *Id.*, at 7-8.
 He also points to required exposure to SEIU’s speech on bulletin boards which
 7 IPs must “necessarily frequent due to work-related business” and on the state
 mandated online payroll system where SEIU receives space for displaying
 8 messages. *Id.* at 8-9. The Complaint asserts that during all these contacts, SEIU
 “promotes its organization, solicits funding, solicits membership, solicits
 9 donations to political committees, and extols its positions on matters of public
 concern.” *Id.* at 9-10. It maintains that Plaintiff “objects to being compelled to
 10 listen to and receive SEIU’s speech” and that he cannot avoid it when visiting
 state offices or using the online system. *Id.*, at 10. According to the Complaint,
 11 “neither union membership nor the payment of any dues or fees to SEIU is a
 condition for Plaintiff, or any IP, to receive reimbursements/pay.” *Id.*, at 10. The
 12 Complaint alleges that by paying the IPs to attend the required events where SEIU
 is speaking, the state is giving its money, property and employees in the aid of
 13 SEIU. *Id.* at 11-12.

14 The Complaint asserts that the Freedom Foundation, the entity whose
 lawyers represent Plaintiff here, “requested the State for the same speaking
 privileges and access to IPs as the state gave SEIU pursuant to the 2015-2017
 15 CBA on January 20, 2015.” *Id.*, at 10. The state did not respond, so the Freedom
 Foundation construed the lack of response as a denial. *Id.*, at 10-11.

16 The Complaint asserts that the state is violating “Plaintiff’s and similarly
 situated IPs’ First Amendment rights” by forcing the pro-union content or
 17 viewpoint based speech on them as captive audiences at mandatory meetings, on
 the bulletin board and online. *Id.*, at 15. It also asserts that the state is violating
 18 the Washington State Constitution Art. 8 § 5 and RCW 42.52.160 by expending
 resources in favor of SEIU and receiving nothing in exchange. *Id.*, at 19-24.
 19 Plaintiff seeks declaratory relief that certain provisions of the CBA are invalid and
 injunctive relief to prohibit enforcement of those terms, as well as attorneys’ fees
 20 and costs. *Id.*, at 24-25.

21 Dkt. 26, at 2-4. Defendant SEIU Healthcare NW Training Partnership’s Motion to Dismiss was
 22 granted. *Id.* Plaintiff was given leave until June 6, 2016 to amend his complaint regarding SEIU
 23 Healthcare NW Training Partnership, but did not.

PENDING MOTION

Plaintiff now seeks leave to file an amended complaint to: (1) add three other IPs, Carol Shetler, William Vaughn, and Raul Flores, (2) dismiss Defendants SEIU Healthcare NW Training Partnership and Kevin Quigley, (3) add as a Defendant Patricia Lashway, the new Director of the Washington Department of Social and Health Services, and (4) add factual allegations and claims relating to a Memorandum of Understanding between the State of Washington and SEIU dated April 4, 2016. Dkt. 35. A proposed amended complaint, including lined corrections was filed with the motion. Dkt. 35-1. All Defendants oppose the motion. Dkts. 36 and 39.

II. DISCUSSION

A. STANDARD ON MOTION TO AMEND

Under Fed. R. Civ. P. 15(a)(1), “[a] party may amend its pleading once as a matter of course within (A) 21 days after serving it or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading . . .” Rule 15(a)(2) provides that “a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.” A motion to amend under Rule 15(a)(2), “generally shall be denied only upon showing of bad faith, undue delay, futility, or undue prejudice to the opposing party.” *Chudacoff v. University Medical Center of Southern Nevada*, 649 F.3d 1143, (9th Cir. 2011).

Plaintiff's Motion for Leave to File Amended Complaint (Dkt. 35) should be granted. There is no showing of bad faith, undue delay, or futility in the proposed amendments. Further, Defendants have not shown that they will suffer undue prejudice if Plaintiff is given leave to file his proposed amend complaint. Defendants raise concerns regarding the scope of discovery if

1 these new plaintiffs are added. There is ample time for discovery. The discovery period runs
2 until January 3, 2017. Dkt. 31. If parties require more time for certain discovery, they are free to
3 request it, after making a showing that it is necessary. Further, parties should focus discovery as
4 much as possible. The Plaintiff's motion (Dkt. 35) should be granted and he should be given
5 until September 26, 2016 to file a clean copy of his amended complaint.

6 **III. ORDER**


7 Therefore, it is hereby **ORDERED** that:

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 - Plaintiff's Motion for Leave to File Amended Complaint (Dkt. 35) is
9 **GRANTED;** and

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 - Plaintiff shall file a clean copy of the Amended Complaint on or before
11 **September 26, 2016.**

12 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
13 to any party appearing *pro se* at said party's last known address.

14 Dated this 21st day of September, 2016.

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17 ROBERT J. BRYAN
18 United States District Judge
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